

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202(b), )  
 Table of Allotments, )  
 FM Broadcast Stations )  
 (Columbia City, Florida) )

MM Docket 97-252 /  
 RM-9206

TO: The Commission

**APPLICATION FOR REVIEW**

Max Media (Max), by counsel and pursuant to §1.115 of the Commission's rules, hereby seeks Commission review of the action of the Mass Media Bureau's Policy and Rules Division in its *Report and Order* (the R&O), DA 99-2711, released December 7, 1999, in the above-identified FM allotment rulemaking proceeding.

Max had originally petitioned the Commission to add Columbia City, Florida to the FM Table of Allotments. Max filed Comments and Reply Comments in this proceeding in support of that proposal. The Bureau considered Max's request and rejected it in the R&O. Max is therefore an aggrieved party and has standing to seek review of the R&O.

Notice of the R&O was published in the *Federal Register* on December 17, 1999, at 64 Fed.Reg. 70671. The 30-day period for filing an application for review following this notice expired on January 16, 2000, which was not a business day. This Application for Review is being timely filed on the first business day thereafter.

Dickerson Broadcasting, Inc. (Dickerson) filed a Counterproposal which the Commission also rejected in the R&O. Max supports the Commission's disposition of Dickerson's

Counterproposal and does not seek to disturb that portion of the R&O. However, those aspects of the R&O which served to deny Max's proposal to allot a channel to Columbia City must be reversed. Max clearly demonstrated that Columbia City is a community and qualifies for the allotment of an FM channel under the FCC's allotment policies.

Max filed a Petition for Rulemaking on November 19, 1997, asking the Commission to allot Channel 243A to Columbia City, Florida. Max acknowledged that Columbia City was neither incorporated nor listed as a census designated place. However, Max explained that numerous indicia of community status exist in Columbia City and that the community should qualify as such under the Commission's allotment policies.

Responding to Max's Petition, the Commission released a *Notice of Proposed Rulemaking*, 13 F.C.C.Rcd. 245 (MMB 1998) (NPRM), proposing to allot Channel 243A to Columbia City. However, the Commission said that the information on the record about Columbia City was inadequate to support Max's claim of community status. To overcome that obstacle, Max was asked "to present the Commission with specific information to demonstrate that Columbia City has the social, economic and governmental indicia to qualify it as a 'community' for allotment purposes." NPRM, ¶2. Max was then instructed to seek guidance in the Commission's decision in *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 F.C.C.Rcd. 633 (1991), and cases cited therein.

In the course of preparing its Comments for this proceeding, Max consulted the *Gretna* case and found the following statements of principle.

The Commission's policy is that, if a community is not incorporated or listed in the census reports, the proponents of an allotment must show the place to be a geographically

identifiable population grouping. . . . [W]hat must be shown is that residents of the locality are commonly regarded as a distinct group. The can be proven by the ‘testimony of local residents or by objective indications of the existence of a common perception that locality’s populace constitutes a distinct geographical population grouping.’ Examples of objective indications of community status include receipts from local businesses, photographs of local churches, the existence of political, commercial, social and religious organizations, and services in the community. Another indication of community status is ‘whether residents function and conceive of themselves as residents of a community around which their interests coalesce.’

*Id.*, at 633. Max followed these guidelines in developing its Comments and sought to prove Columbia City’s status by both “testimony of local residents” and “objective indications.”

In its Comments, Max identified some 28 institutions and businesses that are located in Columbia City and that serve the local community. These included the Columbia City Elementary School, the Columbia City Volunteer Fire Department, various retail establishments and restaurants and nine churches. Besides the school and fire department, two of the churches expressly identify themselves in their signage as belonging to Columbia City. *See*, Max Media Comments, Exhibit 1.

The Bureau dismissed this evidence (apparently as not probative) because Max “has not specifically identified these entities with Columbia City addresses or shown that they are intended to serve Columbia City, as opposed to an expanded rural area.” R&O, ¶3. There are no Columbia City addresses in Max’s submission because there is no post office which bears the name “Columbia City.” However, that is not to say that Columbia City does not have its own zip code. All of these institutions and businesses identified their addresses as being in the 32024 zip code area. In Exhibit 16 submitted with its Comments, Max presented a statement from the Postmaster of Lake City, Florida describing the 32024 zip code area as the “Columbia City community delivery area.” Thus while, a separate post office has not been designated as the

“Columbia City” post office, giving rise to Columbia City addresses, the Post Office does recognize 32024 as the “Columbia City” delivery area. From this it can be concluded that the entities described are located in Columbia City.

Furthermore, statements were submitted with Max’s Comments from principals of these institutions and businesses demonstrating their association with the community. *See*, Max Media Comments, Exhibits 2, 3, 4, 5, 6, 7, 8, 9 and 11. These community leaders explicitly identify themselves and their institutions or businesses with Columbia City. The Bureau was mistaken to ignore these testimonials from the individuals most involved in these commercial and social activities. There is no apparent reason to disregard this evidence, as the Bureau apparently did, about the relationship between these entities and the community of Columbia City.

Further following the suggestions set out in *Gretna*, Max gathered together the testimony of some 83 additional residents of Columbia City in which they express their sentiments about Columbia City as a community and give examples of their participation in the social, commercial and governmental aspects of the community. These statements were included with Max’s Comments as Exhibit 10. The Bureau acknowledged the existence of these statements, but again complained that they failed to indicate “Columbia City” addresses. As explained above, there are no such addresses because there is no post office named for Columbia City. Notwithstanding that, the mass of these expressions of a sense of community from local residents demonstrate beyond a doubt the existence of an “identifiable population grouping.” Here is a grouping of residents who clearly “function as and conceive of themselves as residents of a community around which their interests coalesce.” *Gretna, op. cit.*

By contrast, it seems that the Bureau has requested and rejected more appropriate evidence from Max than was ever presented in a similarly situated case where the proposed community for an FM allotment was neither incorporated nor a census designated place. In *Westley, California*, 13 F.C.C.Rcd. 2470 (MMB 1998), this same issue was presented. Commenters in that proceeding merely recited superficial listings of the local commercial and social entities which they could easily observe simply by passing through the community. The Bureau said that this evidence sufficed to demonstrate “business entities that identify themselves with the residents of Westley.” *Id.* at 2471. No evidence was presented as to the sense of community held by the principals in businesses or institutions, nor by members of the public. Max has done so in this proceeding, and yet the Bureau deemed Max’s evidence to be inadequate. The Commission must take steps to eliminate such disparity between similarly situated proposals.

In this proceeding, the Bureau has either considered Max’s evidence too superficially, or has erected a higher standard for community status than is supported by Commission precedent. The indicia of community status need not be exhaustive or extensive. The test is not to be “too stringent.” *Seven Locks Broadcasting Co.*, 37 F.C.C. 82 (1964).

The absence of incorporation, listing in the census, or even a post office bearing the community’s name need not be obstacles to bar the finding of community status for Columbia City.


No single attribute, for that matter, except the existence of a resident population . . . has been held to be the *sine qua non* of community status. The crux of the matter is whether those residing at a given locality are commonly regarded as a distinct group. This may be proven by direct testimony of residents of the locality or by ‘indicia of community,’ i.e., objective circumstances giving indication of a common perception that a locality’s populace constitutes a distinct ‘population grouping.’

*Might-Mac Broadcasting Co.*, 101 F.C.C.2d 303, 306 (Rev.Bd. 1985). The precedent is clear that the testimony of local residents is adequate proof of community status. Max has provided such testimony in abundance. Max has also provided adequate evidence of “objective circumstances,” such as the existence of social, commercial and governmental entities participating the local community of Columbia City. Columbia City possesses the requisite qualifications to be a community for FM channel allotment purposes.

Wherefore, Max Media respectfully urges the Commission to reverse the Bureau’s decision to deny Max’s proposal, and to allot Channel 243A to Columbia City, Florida.

Respectfully submitted

MAX MEDIA

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January 18, 2000

## CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 18<sup>th</sup> day of January, 2000, that I have caused a copy of the foregoing document to be served by United States mail with first class postage prepaid upon the following:

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